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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/590,652

04/02/2007

Furman O'Dell

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT

PAPER NUMBER

3644

MAIL DATE

DELIVERY MODE

11/13/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/590,652	<b>Applicant(s)</b> O'DELL ET AL.	
	<b>Examiner</b> Yvonne R. Abbott	<b>Art Unit</b> 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13, 16-22, 24-26, 29-36 and 38-44 is/are rejected.
- 7) ☒ Claim(s) 10, 14, 15, 23, 27, 28 and 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Specification***

1. The disclosure is objected to because of the following informalities: in the Abstract, line 3, "pied" should be – piece --.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 6, "said registration finger" lacks prior antecedent basis.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 7-9, 11-13, 16-22, 24-26, and 40-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Lieb et al. (6408788). Lieb et al. show a birdfeeder adapted to dispense thistle or mixed birdseed to birds, comprising: a birdseed reservoir (11) with a surrounding sidewall adapted to receive the birdseed therein, said sidewall having an opening formed therethrough; and a seed dispenser (10) associated with the opening in said sidewall so as to cover said opening and

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adapted to dispense the birdseed to the birds, said seed dispenser having a plastic base piece (12) mounted to the opening and at least partly disposed in the reservoir (at (13)), and a plastic apertured piece disposed in the base piece and cooperating with said opening, said apertured piece including a first seed aperture (23) of a first configuration and a second seed aperture defined by accessibility to trough (14) of a second configuration that is different from that of the first configuration and being moveable (see Fig. 4) relative to said base piece between a first orientation (Fig. 3) in which said first seed aperture is oriented in a seed accessible state so as to provide access to the bird seed and a second orientation (Fig. 1) in which said second seed aperture is in the seed accessible state; wherein said base piece includes a plurality of spaced apart retaining tabs, fingers, fasteners or prongs (13) operative to releasably retain said apertured piece and permit movement thereof relative to said base piece; wherein said base piece includes a wall having a seed outlet (16) formed therethrough in fluid communication with the opening, wherein the seed outlet is in fluid communication with the first seed aperture when said apertured piece is in the first orientation and wherein access to the birdseed via the second seed aperture is obstructed by said wall, and wherein the seed outlet is in fluid communication with the second seed aperture when said apertured piece is in the second orientation and wherein access to the birdseed via the first seed aperture is obstructed by said wall. The apertured piece is also considered to be an apertured dial in that it is a rotatable knob used for regulating a mechanism.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 29-36, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lieb et al. ('788) in view of Bescherer (5215039). Bescherer teaches that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a hanger (16) and a plurality of feed ports/ dispensers on a birdfeeder in order to provide convenient access and accommodate more than one bird at once.

***Allowable Subject Matter***

7. Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. Claims 10, 14, 15, 23, 27, 28 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571)

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272-6896. The examiner can normally be reached on Monday-Thursday 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571) 272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Yvonne R. Abbott/  
Primary Examiner, Art Unit 3644